

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TORREY BROWN,

Defendant-Appellant.

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UNPUBLISHED

May 24, 2005

No. 252103

Wayne Circuit Court

LC No. 03-007307-01

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree murder, MCL 750.317, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, felon in possession of a firearm, MCL 750.224f, and assault with intent to murder, MCL 750.83. Defendant was sentenced to concurrent prison terms of thirty-five to seventy years for the second-degree murder conviction, one to five years for the felon in possession of a firearm conviction, ten to twenty years for the assault with intent to murder conviction, and a consecutive term of two years' imprisonment for the felony-firearm conviction. We affirm. This case is being decided without oral argument under MCR 7.214(E).

This case stems from the shooting death of Lance Wilson outside a Detroit bar. Testimony below established that the decedent and two others were asked to leave the bar when one of the decedent's companions became intoxicated. On their way out of the bar, the decedent bumped into defendant, who was entering the bar. No words were exchanged between them at this point, but the decedent turned and gave defendant a look that was described by the decedent's brother<sup>1</sup> as being a "grim."<sup>2</sup> The parties then separated, with the decedent and his companions going to the decedent's van. Soon after, a car in which defendant was a passenger drove past the van, turned around, and parked next to it. Defendant got out and proceeded to the driver's side of the vehicle where the decedent was sitting. According to one of the decedent's companions, after two inconsequential words passed between defendant and the decedent,

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<sup>1</sup> The decedent's brother was working at the bar on the night his brother was shot. The decedent's brother escorted the decedent and his two companions out of the bar.

<sup>2</sup> A "grim" appears to be a dirty look of some sort.

defendant pulled a gun and shot the decedent. The decedent's companion testified that he felt the first shot before he heard it and that he heard additional shots fired as he ran away from the van. The decedent received four gunshot wounds, including a lethal heart wound. At least eight shell casings were discovered at the scene.

Defendant first argues that the prosecution presented insufficient evidence to support his second-degree murder and assault with intent to commit murder convictions. We disagree. We review claims of insufficient evidence de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), viewing the evidence in a light most favorable to the prosecution. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

"The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. "The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "[I]t is not enough that the defendant acted only with an intent to cause serious bodily injury or with a conscious disregard of the risk of death." *People v Lipps*, 167 Mich App 99, 105-106; 421 NW2d 586 (1988), citing *People v Taylor*, 422 Mich 554, 567; 375 NW2d 1 (1985). Rather, the prosecution must show the actual intent to kill. *Taylor*, *supra* at 567. For both crimes, the intent to kill may be proved by inference from any facts in evidence and "minimal circumstantial evidence is sufficient." *McRunels*, *supra* at 181.

The testimony of the decedent's brother and one of the decedent's companions positively identified defendant as the individual who was bumped by the decedent as he exited the bar. The defendant's companion also identified defendant as the individual who approached the driver's side of the van and stood before the decedent. The decedent's companion felt a gunshot against his face and saw a flash coming from defendant toward the decedent. Another eyewitness testified that there was only one shooter. It is reasonable to conclude from this evidence that defendant fired the shots at the decedent.

The evidence also supports a finding that defendant acted with the requisite intent to kill. "The intent to kill may be proved by inference from any facts in evidence. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *McRunels*, *supra* at 181. With respect to the decedent, his brother testified that after the bump outside the bar, he stepped between the decedent and defendant to make sure that nothing else occurred. The decedent's companion testified that when defendant's car turned around, defendant looked inside the van, exited his vehicle and approached the decedent, and after a couple of inconsequential words, fired at the decedent. A juror could reasonably infer from this evidence that defendant was looking for the decedent after their exchange, and given the proximity in which the shots were fired, that defendant intended to kill, or to cause great bodily harm to, the decedent.

With respect to the decedent's companion, there was testimony that after he shot the decedent, defendant walked toward the decedent's companion as he was firing additional shots. The decedent's companion continued to hear shots as he ran down the street away from the van.

While at least eight shell casings were recovered at the scene, the decedent only sustained four gunshot wounds. It is reasonable to infer from this evidence that after defendant shot the decedent, defendant fired at the decedent's companion as ran from the scene of the crime.

Accordingly, we conclude that sufficient evidence was adduced below to support both defendant's second-degree murder and assault with intent to commit murder convictions.

Finally, defendant argues that the trial court erred in refusing to instruct the jury on voluntary manslaughter. We disagree. This Court reviews the claim of an erroneous jury instruction de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). "The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court." *People v Heikkinen*, 250 Mich App 322, 327; 646 NW2d 190 (2002). We "review jury instructions in their entirety to determine if error requiring reversal occurred." *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

The elements of voluntary manslaughter are (1) that the defendant killed in the heat of passion, (2) that the passion was caused by adequate provocation, and (3) there was not a lapse of time during which a reasonable person could have controlled his passions. *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998) aff'd 461 Mich 992 (2000). "The provocation necessary to mitigate a homicide from murder to manslaughter is that which causes the defendant to act out of passion rather than reason. . . . [T]he provocation must be adequate, namely, that which would cause a *reasonable person* to lose control." *Id.* (Emphasis in original).

We conclude that a rational view of the evidence does not support an instruction on voluntary manslaughter. First, there is little evidence that defendant was acting in the heat of passion when he shot the decedent. Second, defendant fails to establish that the alleged provocation was adequate. A bump and a stare are not the type of interaction which would cause a reasonable person "to act out of passion rather than reason." In any event, enough time passed between the bump and the shooting for defendant's alleged passions to calm.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski